

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                              |   |                        |
|------------------------------|---|------------------------|
| MICHAEL L. BENNETT,          | ) |                        |
|                              | ) | Case No. 1:14-cv-10213 |
| Plaintiff,                   | ) |                        |
|                              | ) |                        |
| v.                           | ) | <b>COMPLAINT</b>       |
|                              | ) |                        |
| WINDHAM PROFESSIONALS, INC., | ) |                        |
|                              | ) |                        |
| Defendant.                   | ) | <b>JURY DEMANDED</b>   |
|                              | ) |                        |

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Now comes the Plaintiff, MICHAEL L. BENNETT, by and through his attorneys, and for his Complaint against the Defendant, WINDHAM PROFESSIONALS, INC., Plaintiff alleges and states as follows:

**PRELIMINARY STATEMENT**

1. This is an action for damages for violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*

**JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337 and 1367, and 15 U.S.C. § 1692k(d). This jurisdiction includes supplemental jurisdiction with respect to pendent state law claims.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to this claim occurred in this District.

**PARTIES**

4. Plaintiff is an individual who was at all relevant times residing in Chicago, Illinois.

5. Plaintiff is a “consumer” as defined in 15 U.S.C. § 1692a(3), as he is a natural person allegedly obligated to pay a debt.

6. At all relevant times, Defendant acted as a “debt collector” within the meaning of 15 U.S.C. § 1692a(6), in that it held itself out to be a company collecting a consumer debt allegedly owed by Plaintiff.

7. The aforementioned alleged debt is a “debt” within the meaning of 15 U.S.C. § 1692a(5), in that it is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance and/or services which are the subject of the transaction were primarily for personal, family and/or household purposes.

8. On information and belief, Defendant is a corporation of the State of Massachusetts, which is licensed to do business in Illinois, and which has its principal place of business in Salem, New Hampshire.

### **COUNT I**

9. On or about August 5, 2014, an employee, agent and/or representative of Defendant placed a telephone call to Plaintiff in an attempt to collect the alleged debt.

10. During said communication, Plaintiff informed the employee, agent and/or representative of Defendant that he was represented by a law firm with respect to the alleged debt and provided his attorneys’ contact information.

11. Despite having been provided with notice of Plaintiff’s attorney representation, an employee, agent and/or representative of Defendant placed another telephone call to Plaintiff, in a further attempt to collect the alleged debt, on or about August 12, 2014.

12. Despite having been provided with notice of Plaintiff’s attorney representation on two prior occasions, employees, agents and/or representatives of Defendant placed telephone

calls to Plaintiff in further attempts to collect the alleged debt, on or about numerous subsequent dates, including, but not limited to, the following dates and times:

- a. August 15, 2014 at approximately 8:05 a.m.;
- b. August 20, 2014 at approximately 8:07 a.m.;
- c. August 22, 2014 at approximately 10:19 a.m.;
- d. August 27, 2014 at approximately 10:27 a.m.;
- e. August 29, 2014 at approximately 10:19 a.m.;
- f. September 5, 2014 at approximately 10:13 a.m.;
- g. September 10, 2014 at approximately 9:03 a.m.;
- h. September 12, 2014 at approximately 10:12 a.m.;
- i. September 17, 2014 at approximately 10:15 a.m.;
- j. September 19, 2014 at approximately 8:04 a.m.;
- k. September 23, 2014 at approximately 10:09 a.m.; and
- l. September 30, 2014 at approximately 3:30 p.m.

13. In addition, during or about early October of 2014, Plaintiff began receiving automated voicemail messages from Defendant approximately every other day. The automated voicemail messages asked for “Michael Bennett” and then stated that the call was being placed in an attempt to collect a debt.

14. In its attempts to collect the alleged debt as outlined above, Defendant damaged Plaintiff and violated the FDCPA.

15. As a result of Defendant’s actions as outlined above, Plaintiff has suffered and continues to suffer stress, aggravation, emotional distress and mental anguish.

16. Defendant violated 15 U.S.C. § 1692c(a)(2) by communicating with Plaintiff after Defendant had been advised that Plaintiff was represented by an attorney with respect to the alleged debt.

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment against Defendant for Plaintiff's actual damages suffered as a direct and proximate result of Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(1);
- b. Judgment against Defendant for \$1,000 in statutory damages for Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(2)(A);
- c. Judgment against Defendant for Plaintiff's reasonable attorneys' fees and costs incurred in this action, pursuant to 15 U.S.C. §1692k(a)(3); and
- d. Any other legal and/or equitable relief as the Court deems appropriate.

## COUNT II

17. Plaintiff incorporates all of the allegations and statements made above as if reiterated herein.

18. Defendant violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which was to harass, oppress and/or abuse Plaintiff in connection with the collection of the alleged debt.

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment against Defendant for Plaintiff's actual damages suffered as a direct and proximate result of Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(1);

- b. Judgment against Defendant for \$1,000 in statutory damages for Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(2)(A);
- c. Judgment against Defendant for Plaintiff's reasonable attorneys' fees and costs incurred in this action, pursuant to 15 U.S.C. §1692k(a)(3); and
- d. Any other legal and/or equitable relief as the Court deems appropriate.

### **COUNT III**

19. Plaintiff incorporates all of the allegations and statements made above as if reiterated herein.

20. Defendant violated 15 U.S.C. § 1692d(5) by causing Plaintiff's telephone to ring and/or engaging Plaintiff in conversation repeatedly and continuously with the intent to annoy, abuse and/or harass.

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment against Defendant for Plaintiff's actual damages suffered as a direct and proximate result of Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(1);
- b. Judgment against Defendant for \$1,000 in statutory damages for Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(2)(A);
- c. Judgment against Defendant for Plaintiff's reasonable attorneys' fees and costs incurred in this action, pursuant to 15 U.S.C. §1692k(a)(3); and
- d. Any other legal and/or equitable relief as the Court deems appropriate.

**COUNT IV**

21. Plaintiff incorporates all of the allegations and statements made above as if reiterated herein.

22. Defendant violated 15 U.S.C. § 1692f by using an unfair or unconscionable means to attempt to collect the alleged debt.

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment against Defendant for Plaintiff's actual damages suffered as a direct and proximate result of Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(1);
- b. Judgment against Defendant for \$1,000 in statutory damages for Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(2)(A);
- c. Judgment against Defendant for Plaintiff's reasonable attorneys' fees and costs incurred in this action, pursuant to 15 U.S.C. §1692k(a)(3); and
- d. Any other legal and/or equitable relief as the Court deems appropriate.

**COUNT V**

23. Plaintiff incorporates all of the allegations and statements made above as if reiterated herein.

24. Plaintiff is a "person" as defined in 47 U.S.C. § 153(39).

25. Defendant is a "person" as defined in 47 U.S.C. § 153(39).

26. On information and belief, Defendant placed the telephone calls described above to Plaintiff using an "automatic telephone dialing system," as defined in 47 U.S.C. § 227(a)(1), and an "artificial or prerecorded voice" message, as described in 47 U.S.C. § 227(b)(1)(A).

27. On information and belief, the purpose of these telephone calls was the attempted collection of an alleged debt.

28. On information and belief, Defendant routinely uses an automatic telephone dialing systems and artificial and/or prerecorded voice messages in the collection of debts in the ordinary course of its business.

29. Plaintiff did not give Defendant his express consent, invitation or permission to contact him using an automatic telephone dialing system and/or an artificial and/or prerecorded voice message. In the alternative, any prior express consent, invitation or permission which Plaintiff may have given Defendant to contact him was terminated and revoked when Plaintiff informed Defendant of his attorneys' representation in relation to the alleged debt.

30. Defendant's telephone calls to Plaintiff using an automatic telephone dialing system and an artificial and/or prerecorded voice message were not made for emergency purposes.

31. Defendant's telephone calls to Plaintiff utilizing an automatic telephone dialing system and an artificial and/or prerecorded voice message, for non-emergency purposes, and in the absence of Plaintiff's express consent, invitation or permission violated 47 U.S.C. § 227(b)(1).

32. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA including, but not limited to, each of the above-cited provisions of 47 U.S.C. § 227, *et seq.*

33. As a result of Defendant's negligent violations of the TCPA, 47 U.S.C. § 227, *et seq.*, Plaintiff is entitled to an award of actual monetary loss, plus \$500.00 for each and every such violation, pursuant to 47 U.S.C. § 227(b)(3).

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment against Defendant for Plaintiff's actual damages suffered as a direct and proximate result of any negligent violations of the TCPA by Defendant;
- b. Judgment against Defendant for statutory damages of \$500.00 for each and every negligent violation of the TCPA by Defendant;
- c. Judgment against Defendant for Plaintiff's reasonable attorneys' fees, witness fees, court costs and other litigation costs; and
- d. Any other relief deemed appropriate by this Honorable Court.

#### COUNT VI

34. Plaintiff incorporates all of the allegations and statements made above as if reiterated herein.

35. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA including, but not limited to, each of the above-cited provisions of 47 U.S.C. § 227, *et seq.*

36. As a result of Defendant's knowing and/or willful violations of the TCPA, 47 U.S.C. § 227, *et seq.*, Plaintiff is entitled to an award of actual monetary loss, plus \$1,500.00 for each and every such violation, pursuant to 47 U.S.C. § 227(b)(3).

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment against Defendant for Plaintiff's actual damages suffered as a direct and proximate result of any knowing and/or willful violations of the TCPA by Defendant;



- b. Judgment against Defendant for treble statutory damages of \$1,500.00 for each and every knowing and/or willful violation of the TCPA by Defendant;
- c. Judgment against Defendant for Plaintiff's reasonable attorneys' fees, witness fees, court costs and other litigation costs; and
- d. Any other relief deemed appropriate by this Honorable Court.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues in this action, except for any issues relating to the amount of attorneys' fees and litigation costs to be awarded should Plaintiff prevail on any of his FDCPA claims in this action.

RESPECTFULLY SUBMITTED,

MICHAEL L. BENNETT

By: /s/ David B. Levin  
Attorney for Plaintiff

David B. Levin  
Attorney No. 6212141  
Attorney for Plaintiff  
Upright Litigation LLC  
25 E. Washington Street  
Suite 400  
Chicago, IL 60602  
Phone: (312) 878-1867  
Fax: (866) 359-7478  
dlevin@uprightlaw.com